



City of Norfolk

Office of the City Manager

C: Dir. Of Finance and Business Services, ACM Stein

July 11, 2006

To the Honorable Council
City of Norfolk, Virginia

Re: Norfolk Airport Authority Approval:
\$6,000,000 Revenue Bonds for Norfolk
Academy Fine Arts Center and Athletic
Pavilion

Ladies and Gentlemen:

I. **Recommended Action:** Adopt resolution.

II. **Overview**

This agenda item is a resolution approving the issuance of \$6,000,000.00 of the Norfolk Airport Authority's revenue bond to finance the cost of construction and equipping the Tucker Arts Center and Athletic Pavilion at Norfolk Academy located at 1585, Wesleyan Drive.

III. **Analysis**

A. **General**

Norfolk Academy is an independent, coeducational, day school of approximately 1200 students in grades 1-12, located at 1585 Wesleyan Drive. The school is in the second phase of a comprehensive, school-wide building plan that was launched with the award-winning Batten Library. This bond sale will support the completion of the John H. Tucker Jr., Arts Center and new Athletic Pavilion.

B. **Fiscal**

The bonds do not constitute a debt or pledge of faith and/or credit of the City or the Airport Authority. The bonds are payable solely from the revenues generated by Norfolk Academy.

C. **Environmental**

Not applicable.

R-11

D. Community Outreach/Notification

Notification for this item was done through the regular process of the Norfolk Airport Commission as well as the City of Norfolk's regular agenda notification process.

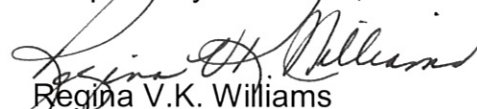
IV. Board/Commission Action

The Norfolk Airport Authority held a public hearing on the proposed bond issuance on June 22, 2006. No members of the public spoke at the public hearing in opposition to the bond or the project. At the close of the public hearing, the Authority adopted a resolution recommending the issuance of the bonds under Chapter 463 of the Acts of Assembly of 1948 for the purpose of providing debt service cost savings relating to the issuance of the Bond as a "qualified tax-exempt obligation" within the meaning of the Internal Revenue Code.

V. Conclusion

Support of this resolution will facilitate Norfolk Academy's mission as a college preparatory co-educational day school that strives to assist its students to develop maturity of body, mind, and character. It is therefore recommended that the City Council adopt the attached resolution.

Respectfully submitted,


Regina V.K. Williams
City Manager

Coordination/Outreach

This letter has been coordinated with the Department of Finance and Business Services and the City Attorney's Office.

sd 6/27/06 *BAP*

Form and Correctness Approved:

By *Mary J. G. P.*
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By *Stanley Stein*
DEPT. Executive

Resolution

A RESOLUTION APPROVING THE EXERCISE BY THE NORFOLK AIRPORT AUTHORITY OF POWERS CONFERRED BY CHAPTER 34, ACTS OF ASSEMBLY OF 1918, CHAPTER 463, ACTS OF THE ASSEMBLY OF 1948, AS AMENDED, AND SECTION 144 OF THE NORFOLK CHARTER, AS AMENDED, IN CONJUNCTION WITH THE ISSUANCE FOR THE NORFOLK ACADEMY, A VIRGINIA NONSTOCK CORPORATION (NORFOLK ACADEMY), OF NOT TO EXCEED \$6,000,000 OF THE AUTHORITY'S REVENUE BOND (1) IN UNDERTAKING THE FINANCING OF THE COST OF THE CONSTRUCTION AND EQUIPPING OF THE TUCKER ARTS CENTER AND THE ATHLETIC PAVILION ON THE CAMPUS OF THE NORFOLK ACADEMY AT 1585 WESLEYAN DRIVE, NORFOLK, VIRGINIA 23502, AND TO UNDERTAKE CERTAIN CAPITAL EXPENDITURES WITH RESPECT TO THE EQUIPPING OF ACADEMIC, ADMINISTRATIVE AND ATHLETIC FACILITIES OF NORFOLK ACADEMY AT NORFOLK ACADEMY'S CAMPUS LOCATED AT 1585 WESLEYAN DRIVE, NORFOLK, VIRGINIA 23502 AND (2) TO PAY A PORTION OF THE COST OF ISSUING SAID BONDS.

WHEREAS, Chapter 463 of the Acts of Assembly of 1948, as amended, creates the Norfolk Airport Authority (the Authority) and empowers the Authority to assist Norfolk Academy, by the issuance of not to exceed \$6,000,000 of the Authority's revenue bond (the Bond) (i) in undertaking the financing of the construction and equipping of the Tucker Arts Center and the Athletic Pavilion on the campus of The Norfolk Academy at 1585 Wesleyan Drive, Norfolk, Virginia 23502, and to undertake certain capital expenditures with respect to the equipping of academic, administrative and athletic facilities of Norfolk Academy (collectively, the Facilities) at Norfolk Academy's

campus located at 1585 Wesleyan Drive, Norfolk, Virginia 23502, and (ii) to pay the cost of issuing the Bond; and

WHEREAS, the Facilities are or will be located at 1585 Wesleyan Drive, Norfolk, Virginia, and are or will be owned and operated by Norfolk Academy; and

WHEREAS, Norfolk Academy has its principal business office at 1585 Wesleyan Drive, Norfolk, Virginia; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the Code), requires approval by this Council of the issuance of any private activity bonds by the Authority, after the Authority has held a public hearing to consider the issuance of such bonds, as one of the acts required in order for the interest on such bonds to qualify for exemption from the imposition of federal income tax; and

WHEREAS, the Authority held a public hearing on June 22, 2006, in compliance with the Code and Section 15.2-4906 of the Code of Virginia of 1950, as amended (the Virginia Code), and after such public hearing did adopt a resolution to issue up to \$6,000,000 of its tax-exempt bonds for the Facilities, subject to the adoption of this resolution; and

WHEREAS, the Authority has recommended that the Council approve the issuance of the Bond; and

WHEREAS, the Bond, as a "qualified 501(c)(3) bond" will be exempt, under Section 146(g)(2) of the Code, from the limitation

on the volume of notes or bonds, the interest on which is exempt from the imposition of federal income tax; and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bond, a record of the public hearing with respect to the Bond and a Fiscal Impact Statement in the form prescribed by Section 15.2-4907 of the Virginia Code, have been filed with the Council; now, therefore,

BE IT RESOLVED by the Council of the City of Norfolk:

Section 1: - That, relying upon the representations of the Authority by its counsel, the recitals in the preambles hereto are found to be true and correct in all respects and are adopted as findings of this Council as if fully rewritten herein.

Section 2: - That the facilities proposed to be financed by the issuance of the Bond are deemed appropriate for such financing and, accordingly, the issuance of the Bond is hereby approved.

Section 3: - That the approval of the issuance of the Bond as required by Section 147(f) of the Code does not constitute an endorsement to a prospective purchaser of the Bonds of the proposed use of the proceeds of the Bond or the creditworthiness of Norfolk Academy, and as required by Virginia law, the Bond shall provide that neither the Commonwealth of Virginia, the City nor the Authority shall be obligated to pay the principal, or premium, if any, of the Bond or the interest thereon or other costs incident thereto except from the revenues and monies pledged therefor and neither the faith and credit nor the taxing power of the Commonwealth of Virginia, the City or the Authority shall be pledged thereto.

Section 4: - That this resolution shall be in effect from and after its adoption.

June 23, 2006

Council of the City of Norfolk
810 Union Street
Norfolk, VA 23510

Re: Not to Exceed \$6,000,000 Norfolk Airport Authority
The Norfolk Academy Bond (2006)

Lady and Gentlemen:

We are general counsel to the Norfolk Airport Authority (the "Authority") and as such we are familiar with the records and proceedings of the Authority. You have requested our opinion in connection with the adoption by the Council of the City of Norfolk (the "Council") of the proposed resolution attached hereto, which approves the issuance of the captioned bonds (the "Bonds") by the Authority pursuant to Chapter 34, Acts of Assembly of 1918, Chapter 463, Acts of the Assembly of 1948, as amended, Section 144 of the Norfolk Charter, as amended, and Section 147(f) of the Internal Revenue Code of 1986, as amended to date, and the regulations outstanding thereunder (the "Code"). The Bonds will be issued to fund the construction and equipping of Tucker Fine Arts Center and the athletic pavilion located on the campus of The Norfolk Academy at 15885 Wesleyan Drive, Norfolk, Virginia and certain capital expenditures with respect to equipping of academic, administrative and athletic facilities at the campus, and to pay certain costs of issuing the Bond, necessitating approval by this Council to comply with state and federal law.

We have examined the proposed resolution and such other information, documents and records as we believe necessary for the purpose of rendering this opinion. Based on the foregoing, we are of the opinion that:

1. All action by the Authority necessary to date to authorize the issuance of the Bonds has been taken in accordance with law and all applicable statutes;
2. The public hearing held by the Authority on June 22, 2006, complied with the requirements of Section 147(f) of the Code and Section 15.2-4906 of the Code of Virginia, as amended to date;
3. The Council is the "applicable elected representative" within the meaning of Section 147(f) of the Code and Section 15.2-4906 of the Code of Virginia, as amended to date, and the proposed resolution, when adopted, will constitute approval for the Bond, within the meaning of Section 147(f) and Section 15.2-4906;
4. The recitals in the preambles of the resolution proposed for adoption by the Council are true and correct in all respects;

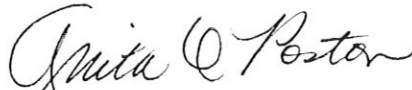
5. The facilities to be financed and described in the attached resolution are eligible for financing by the Authority; and,

6. There is no action, suit, proceeding or investigation at law or equity, before or by any court or public board or body, to the best of our knowledge, pending or threatened against the Authority wherein an unfavorable decision, ruling or finding would in any material respect affect adversely the approval contemplated by the proposed resolution.

This opinion of counsel is rendered based upon the understanding that the proposed resolution in this matter will be acted upon by Council at a later date. We recognize an affirmative obligation to bring to the attention of the Council any circumstance which might materially change this opinion of counsel between the date of this opinion and the date of Council action on this matter.

Very truly yours,

VANDEVENTER BLACK LLP

A handwritten signature in cursive script, reading "Anita O. Poston".

Anita O. Poston

AOP/alh

cc: Mr. Kenneth R. Scott
George Consolvo, Esq.

RESOLUTION OF NORFOLK AIRPORT AUTHORITY
FOR THE NORFOLK ACADEMY

WHEREAS, there has been described to the Norfolk Airport Authority (the Authority) the plans of The Norfolk Academy (Norfolk Academy) whose principal business office and campus is located at 1585 Wesleyan Drive, Norfolk, Virginia, for the issuance of the Authority's revenue bond in an amount not to exceed \$6,000,000 to assist Norfolk Academy in (a) the construction and equipping of the Tucker Arts Center and the Athletic Pavilion on the campus of The Norfolk Academy at 1585 Wesleyan Drive, Norfolk, Virginia 23502, and to undertake certain capital expenditures with respect to the equipping of academic, administrative and athletic facilities of the Company located at 1585 Wesleyan Drive, Norfolk, Virginia 23502, and (b) paying certain costs of issuing the bond; and

WHEREAS, the Facilities will be owned by Norfolk Academy; and

WHEREAS, Norfolk Academy in its appearance before the Authority has described the benefits to be derived from the above undertakings and has requested the Authority to agree to issue the bond under Chapter 463 of the Acts of Assembly of 1948, as amended (the Act); and

WHEREAS, Norfolk Academy in its appearance before the Authority has described the debt service cost savings relating to the issuance of the bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, hereinafter defined; and

WHEREAS, a public hearing with respect to the bond as required by Virginia law and the Internal Revenue Code of 1986, as amended (the Code), has been held at this meeting; and

WHEREAS, Norfolk Academy has elected to proceed with a plan of finance pursuant to which the bond will be privately placed with Bank of America, N.A. (the Lender); and

WHEREAS, there have been presented to this meeting the forms of the following documents and instruments which the Authority proposes to execute to carry out the transactions described above:

(a) Bond Purchase and Sale Agreement (the Bond Purchase Agreement), dated as of July 1, 2006, among the Authority, Norfolk Academy and the Lender, together with Norfolk Academy's promissory note (the Note) payable to the Authority; and

(b) The Authority's Revenue Bond (Norfolk Academy Project) Series 2006 (the Bond), in registered form, and in the aggregate principal amount, payable and bearing interest as set forth therein.

BE IT RESOLVED BY THE NORFOLK AIRPORT AUTHORITY:

1. The recitals made in the preambles to this resolution are hereby adopted as a part of this resolution.

2. It is hereby found and determined that the issuance of the Bond for the purposes described herein will promote education in the City of Norfolk and the Commonwealth of Virginia.

3. To assist Norfolk Academy to finance the Facilities and to pay costs of issuance of the Bond, the Authority hereby agrees to undertake the issuance of the Bond. Principal of and premium, if any, and interest on the Bond shall be limited obligations of the Authority payable solely from the revenues and receipts derived by the Authority from Norfolk Academy or other available funds provided by Norfolk Academy. The principal of and premium, if any, and interest on the Bond shall not be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City of Norfolk. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the City of Norfolk, shall be obligated to pay the principal of or premium, if any, or interest on the Bond or other costs incident thereto except from revenues and receipts derived by the Authority from Norfolk Academy or other available funds provided by Norfolk Academy, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City of Norfolk, will be pledged to the payment for principal of or premium, if any, or interest on the Bond or other costs incident thereto. No covenant, condition or agreement contained in the Bond or in any financing instrument executed and delivered in connection therewith shall be deemed to be a covenant, agreement or obligation of any present, past or future commissioner, officer, employee or agent of the Authority in his individual capacity, and no officer of the Authority executing the Bond or any other financing document or instrument shall be liable personally thereon or subject to any personal liability or accountability by reason of the issuance or execution thereof.

4 Concurrently with the issuance of the Bond, the Chairman, Vice Chairman or Executive Director of the Authority is hereby authorized and directed to execute and to deliver the Bond Purchase Agreement to the other parties thereto.

5 The Chairman, Vice Chairman or Executive Director of the Authority is hereby authorized and directed to execute, the Secretary or Assistant Secretary is authorized and directed to affix and attest the seal of the Authority, and either is authorized and directed to deliver the Bond to the Lender upon the terms provided in the Bond Purchase Agreement. All terms of the Bond are by this reference thereto incorporated herein as a part of this resolution.

6 The Chairman, Vice Chairman or Executive Director of the Authority is hereby authorized and directed to execute and deliver to the Lender an assignment of the Note and of the rights of the Authority under the Bond Purchase Agreement (except for the reserved rights set forth therein).

7 The Bond Purchase Agreement, the Note and the Bond shall be in substantially the forms presented at this meeting which are hereby approved, with such completions, omissions, insertions and changes as may be approved by the Chairman, Vice Chairman or Executive Director of the Authority, his execution to constitute conclusive evidence of his approval of any such omissions, insertions and changes.

8 The officers of the Authority are hereby authorized and directed to execute and deliver all certificates and instruments, including Internal Revenue Service Form 8038, and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bond and the undertaking of the plan of finance described herein.

9 The Authority hereby recommends and requests that the City Council of the City of Norfolk (the Council) approve the issuance of the Bond in accordance with Virginia law and the Code. The Authority hereby directs the Chairman, Vice Chairman or Executive Director of the Authority to promptly submit to the Council a fiscal impact statement in the form prescribed by Section 15.2-4907 of the Virginia Code, a reasonably detailed summary of the comments expressed at the public hearing held at this meeting pursuant to Section 15.2-4906 of the Virginia Code and a copy of this resolution.

10. It having been represented to the Authority that it is necessary to proceed immediately with the financing of the Facilities, the Authority agrees that Norfolk Academy may proceed with plans for the Facilities, enter into contracts for construction and equipping and take such other steps as Norfolk Academy may deem appropriate in connection therewith, provided that nothing herein shall be deemed to authorize Norfolk Academy to obligate the Authority without its consent in each instance to the payment of any monies or the performance of any acts in connection with the Facilities. The Authority hereby agrees that Norfolk Academy may be reimbursed from the proceeds of the Bond for all costs so expended from and after the date of this resolution together with costs previously expended by Norfolk Academy within sixty (60) days prior to December 14, 2005, the date Norfolk Academy evidenced its intent to finance the facilities with tax-exempt obligations.

11. Norfolk Academy having requested the appointment of Kaufman & Canoles, P.C., Norfolk, Virginia, as Bond Counsel in connection with the issuance of the Bond, the Authority hereby appoints Kaufman & Canoles, P.C., as Bond Counsel to supervise the proceedings and approve the issuance of the Bond.

12. The Authority hereby designates the Bond a "qualified tax-exempt obligation" of the Authority for calendar year 2006 within the meaning of the provisions of Section 265(b)(3) of the Code.

13. All costs and expenses in connection with the financing plan, including the fees of the Authority and the fees and expenses of Bond Counsel, counsel to the Authority, counsel to Norfolk Academy and counsel to the Lender, shall be paid from the proceeds of the Bond to the extent permitted by law or from funds of Norfolk Academy. If for any reason the Bond is not

issued, it is understood that all such expenses shall be paid by Norfolk Academy and that the Authority shall have no responsibility therefor.

14. It is understood that the financing documents shall provide that Norfolk Academy shall indemnify and save harmless the Authority, its officers, commissioners, employees and agents from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses in any way connected with the adoption of this resolution and the issuance and sale of the Bond.

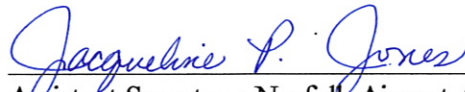
15. The Bond shall not be issued until all governmental approvals as required by Virginia law and the Code have been obtained.

16. All other acts of the officers of the Authority which are in conformity with the purposes and intent of this resolution and in furtherance of the issuance and sale of the Bond are hereby approved and confirmed.

17. This resolution shall take effect immediately upon its adoption.

The undersigned hereby certifies that the above resolution was duly adopted by the commissioners of the Norfolk Airport Authority at a meeting duly called and held on June 22, 2006, and that such resolution is in full force and effect on the date hereof.

Dated: June 23, 2006


Assistant Secretary, Norfolk Airport Authority

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Dated: June 22, 2006

FISCAL IMPACT STATEMENT
SUBMITTED TO THE
NORFOLK AIRPORT AUTHORITY

The undersigned applicant, in order to permit The Norfolk Academy, to submit the following information in compliance with Section 15.2-4907 of the Code of Virginia of 1950, as amended, states:

Name of applicant: The Norfolk Academy

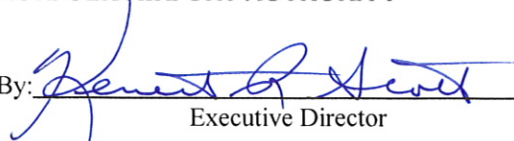
Facility: 1585 Wesleyan Drive, Norfolk, Virginia

- | | | |
|----|---|---------------------|
| 1. | Maximum amount of financing sought | \$6,000,000 |
| 2. | Estimated taxable value of facility's real property to be constructed in the locality | <u>\$20,000,000</u> |
| 3. | Estimated real property tax per year using present tax rates | N/A |
| 4. | Estimated personal property tax per year using present tax rates | N/A |
| 5. | Estimated merchant's capital tax per year using present tax rates | N/A |
| 6. | a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality | \$ <u>3,000</u> |
| | b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality | \$ <u>2,000</u> |
| | c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality | \$ <u>105,000</u> |
| | d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality | \$ <u>25,000</u> |
| 7. | Estimated number of regular employees on year round basis (FTE) | <u>7</u> |
| 8. | Average annual salary per employee | \$ <u>25,500</u> |

THE NORFOLK ACADEMY

By: 
Authorized Representative

NORFOLK AIRPORT AUTHORITY

By: 
Executive Director

CONFLICTS OF INTEREST CERTIFICATE
FOR
THE NORFOLK ACADEMY

The undersigned authorized representative of The Norfolk Academy (the "Company") hereby certifies to the Norfolk Airport Authority ("Authority"), that the persons whose names and addresses are set forth below constitute each person

- (a) having a direct or indirect ownership interest in Company of three percent (3%) or more of the total equity of the Company if such person is also an officer or employee of the Authority or the City of Norfolk (the "City");
- (b) having annual income or reasonably anticipating having annual income of \$10,000.00 or more from Company, if such person is also an officer or employee of the Authority or of the City;
- (c) having personal liability on behalf of the Company of three percent (3%) or more of the total assets of the Company if such person is also an officer or employee of the Authority or the City;
- (d) having an ownership interest as described in (a) above or having income or reasonably anticipating having income of \$10,000.00 or more from representing the Company or any other entity that will benefit or suffer from the Authority's assistance in connection with the refinancing of the Facility ("Other Entity") regarding the proposed refinancing of the Facility, if such person is also an officer or employee of the Authority or the City of Norfolk;
- (e) who is an officer or employee of the Authority or of the City of Norfolk and will derive any income, profit or other thing of value from the Facility or the financing or transfer thereof, or otherwise stands to benefit therefrom.

SEE EXHIBIT A

Attached hereto is a statement describing in detail the relationship of each person named above to the Company or Other Entity and to the Authority and/or the City, in order that any member of the Board of Directors of the Authority, any member of City Council and any employee of either the Authority or the City acting on this application shall have full knowledge of all matters requiring disclosure or disqualification under the Comprehensive Conflict of Interests Act, Chapter 40, Title 2.1 of the Code of Virginia.

THE NORFOLK ACADEMY

Date: June 22, 2006

By: 
Authorized Representative

EXHIBIT A

Barclay C. Winn

Barclay C. Winn is a principal of Winn Nursery and a member of the City Council of the City of Norfolk. From time to time, Winn Nursery provides landscaping services to The Norfolk Academy.

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